

CITY COUNCIL PROCEEDINGS

September 6, 2011

1. **CALL TO ORDER AND ROLL CALL**

Mayor Osborne called the regular September 6, 2011 City Council meeting to order at 6:07 p.m. in Council Chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Cowles, Gray, Karakehian and Morzel.

Council Members Appelbaum and Becker were absent.

2. **OPEN COMMENT and COUNCIL/STAFF RESPONSE** – 6:07 p.m.

1. Shannon Burke with the Fairview Net Zero club spoke in support of a ban on single use plastic bags and a fee on single use paper bags.
2. Kira Headrick with the Fairview Net Zero club also spoke in support of a ban on single use plastic bags and a fee on single use paper bags.
3. Rachael Pryor spoke to medical marijuana licensing denials and suggested Council was passing legislation on an industry it didn't fully understand.
4. Stacy Hsu from Summit Charter School and part of the Net Zero club urged Council to place a ban on plastic bags.
5. Emil VonDungen raised concern about the health hazards related to Xcel energy trunk lines near Baseline and 35th Street.
6. Daniel Williams representing Southwest Alternative Care spoke to a medical marijuana license denial and suggested the City had not taken action to hear an appeal. He urged Council not to change the rules midstream.
7. Carl Savitz with Flower of Life urged Council to re-examine the separate "tenant space" provision of the medical marijuana ordinance.
8. Jenny Harvey pooling time with Sophie Chen and Sarafin Castellino with Summit Charter School's Net Zero Club strongly urged Council to place a 5 cent fee on single use bags.
9. Jennifer Zhu from Fairview's Net Zero Club also supported a fee or ban on plastic bags.
10. Vivian Chen from Fairview's Net Zero Club also supported a ban on plastic bags in Boulder.
11. Michelle Tucker urged Council to keep the fundamental American right to appeal available for medical marijuana dispensaries.
12. Brett Barney a medical marijuana attorney suggested the denial of an appeal didn't offer the opportunity for administrative correction and review of factual data. This didn't provide due process for medical marijuana businesses.
13. Mike Stengel the property owner of where a party recently occurred on University Hill offered that he was available for any questions from Council.
14. Seth Brigham commented that McCarthyism was alive in Boulder and associated it with his recent arrest.
15. Michael Hannan representing the Flower of Life medical marijuana business spoke to how the new legislation could impact local businesses.

16. Richard Demuth raised concern about cars driving illegally with no license plates or dark license plates.
17. Stephen Keenan raised concern about the aggressive behavior and angry outbursts at Council meetings. He indicated he would like to show President Eisenhower's farewell address at a future council meeting. He also supported Council Member Cowles' view on GMO's on open space.
18. Elizabeth Allen urged Council to send Item 3G back to Planning Board and commented that more office space was not needed in Downtown.
19. Peter Richards complained that the City Council agenda was not placed in the Sunday newspaper.
20. Miriam Paisner raised concern about a diminishing middle class, traffic and construction in Boulder. She also complained about the Valmont Dog Park being a mess.
21. Corey Donohue suggested Council was playing around the constitution with medical marijuana legislation. He also did not like how Council treated Mr. Brigham.
22. Hillary Rosner a University Hill Homeowner suggested behavior on the Hill was getting worse. She urged Council to make Hill issues a priority.
23. Philip Higgs also voiced his extreme displeasure with the Police Chief's comments in the newspaper regarding the University Hill area. He also urged Council to make University Hill issues a priority.
24. Jay Czarkowski a licensed medical marijuana business owner urged Council not to deny due process to licenses that were denied. Regarding advertisement he provided examples of other drugs and cigarettes and did not feel this was an issue Council could address.
25. Diana Caile spoke in support of restricting medical marijuana advertisements to the medicinal benefits and not allowing them to promote recreational use. She raised concern about marijuana use among the youth in Boulder.

City Manager Response:

City Manager Brautigam indicated there would be a study session on October 11 regarding the Zero Waste Master Plan which would include information about plastic bag use. Regarding Xcel energy and the trunk lines, she would forward that information to staff for a response.

City Attorney Response:

City Attorney Tom Carr indicated that pending medical marijuana applications would receive appeals and "retroactivity" could certainly be included in the ordinance language. Some delay occurred with the hearings due to the need for businesses to be inspected.

City Council Response:

Council Member Gray asked staff to respond to the public's comments on medical marijuana (vertical integration, etc..) as first reading questions.

Council Member Cowles suggested CAC should discuss the 2 minute limit and being more consistent with speakers.

Council Member Gray responded to Mr. Dumuth and indicated that the Police do ticket individuals who drive without proper license plates.

3. **CONSENT AGENDA:** - 7:09 p.m.

- A. **CONSIDERATION OF A MOTION TO APPROVE THE AUGUST 2, 2011 CITY COUNCIL MEETING MINUTES.**
- B. **CONSIDERATION OF A MOTION TO APPROVE THE AUGUST 16, 2011 CITY COUNCIL MEETING MINUTES.**
- C. **CONSIDERATION OF A RESOLUTION SUPPORTING DRCOG'S GRANT APPLICATION FOR HUD'S SUSTAINABLE COMMUNITIES REGIONAL PLANNING GRANT (SCRPG).**
- D. **CONSIDERATION OF A MOTION TO ACCEPT THE WATER UTILITY MASTER PLAN.**
- E. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE No. 7809 AMENDING TITLE 11, "UTILITIES AND AIRPORT" B.R.C. 1981 RELATED TO SECTION 11-1-15, "OUT-OF-CITY WATER SERVICE," B.R.C. 1981 AND SECTION 11-2-10, "OUT-OF-CITY SEWER SERVICE," B.R.C. 1981.**
- F. **CONSIDERATION OF THE FOLLOWING ITEMS RELATED TO A DEVELOPMENT PROJECT PROPOSED FOR A BOULDER COUNTY PROPERTY IDENTIFIED AS 6400 ARAPAHOE:**
 - 1. **A RESOLUTION FINDING THE ANNEXATION PETITION IN COMPLIANCE WITH STATE STATUTES AND ESTABLISHING OCT. 18, 2011 AS THE DATE FOR A PUBLIC HEARING.**
 - 2. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, AN ORDINANCE ANNEXING A 2.79 ACRE PORTION OF ARAPAHOE ROAD FROM 62ND STREET ON THE WEST EXTENDING EASTWARD TO A POINT ALONG THE NORTH PROPERTY LINE OF 6400 ARAPAHOE ROAD WITH AN INITIAL ZONING CLASSIFICATION OF INDUSTRIAL GENERAL (IG).**
 - 3. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, AN ORDINANCE ANNEXING A 9.56 ACRE OF LAND GENERALLY LOCATED AT 6400 ARAPAHOE WITH AN INITIAL ZONING CLASSIFICATION OF INDUSTRIAL GENERAL (IG).**

4. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, AN ORDINANCE ANNEXING A 0.25 ACRE PORTION OF ARAPAHOE ROAD, GENERALLY LOCATED NORTHWEST OF 6400 ARAPAHOE ROAD WITH AN INITIAL ZONING CLASSIFICATION OF INDUSTRIAL GENERAL (IG).**

G. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE AMENDING TITLE 9, LAND USE CODE, B.R.C. 1981:**

1. **SECTION 9-7-1 TABLE 7-1 "FORM AND BULK STANDARDS" ADDING A 65-FOOT SUPPLEMENTAL SETBACK FOR ZONE DISTRICTS DOWNTOWN-5 (DT-5) AND PUBLIC (P) ALONG CANYON BLVD. FROM 9TH TO 16TH STREETS.**
2. **SECTION 9-8-2 TABLE 8-2 "FLOOR AREA RATIO ADDITIONS" ADDING A FLOOR AREA ADDITION FOR COMMERCIAL USES IN THE DT-5 ZONE DISTRICT.**

H. **ITEMS RELATED TO MEDICAL MARIJUANA:**

1. **CONSIDERATION OF A MOTION TO ADOPT A RESOLUTION AFFIRMING THE CITY'S COMMITMENT TO DEFEND IN THE EVENT A CITY EMPLOYEE IS CHARGED WITH VIOLATING FEDERAL LAW FOR IMPLEMENTING OR ENFORCING THE CITY'S MEDICAL MARIJUANA LAWS; AND**
2. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE TO AMEND PROVISIONS OF CHAPTER 6-14 "MEDICAL MARIJUANA."**

Council Member Gray moved, seconded by Karakehian to approve consent items 3A through 3H. The motion carried unanimously 7:0; Appelbaum and Becker absent.

Deputy Mayor Wilson spoke to item 3D and asked staff to seriously consider the comments by the Water Resources Advisory to be vigilant about keeping facilities up to par and suggested the new Director could oversee this in the coming year.

Council Member Karakehian requested clarification on the inflation rates provided on page 7 of the agenda memo for item 3D and suggested this be incorporated in the Water Utility Master Plan document.

4. **CALL- UP CHECK IN:** - 7:14 p.m.

None.

ORDER OF BUSINESS

5. PUBLIC HEARINGS: - 7:15 p.m.

A. CONSIDERATION OF THE FOLLOWING ITEMS RELATED TO A DEVELOPMENT PROJECT TITLED HARPER HOLLOW LOCATED ON A BOULDER COUNTY PROPERTY IDENTIFIED AS 3015 KALMIA AVENUE:

1. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7806 TO ANNEX AND ZONE THE SUBJECT PROPERTY TO FLEX DISTRICT ZONING PER SUBSECTION 9-5-2 (c)(7), B.R.C. 1981;
2. SITE REVIEW TO PERMIT A TOTAL OF 57 DWELLING UNITS (29 SINGLE-FAMILY, 16 DUPLEX UNITS, AND 12 FOURPLEX UNITS), WHICH INCLUDES AN EXISTING HOUSE PROPOSED FOR LANDMARKING, AND
3. REQUEST FOR VESTED RIGHTS PURSUANT TO SECTION 9-2-19, B.R.C. 1981.

APPLICANT/PROPERTY OWNER: HARPER HOLLOW, LLC

Charles Ferro introduced the item. Karl Guiler presented the site context, history and noted the proposal included 57 attached and detached units. Andy Proctor spoke to the community benefit of 45.6% affordable housing at the site and indicated staff was still negotiating with the applicant on the affordable housing piece.

Council Member Gray clarified that the goal was to get between 40-60% affordable housing and staff clarified that this was in the range of what was done at the Northfield Commons site.

Council Member Morzel clarified that in annexations, the amount of housing was based on the negotiations for the amount of affordable housing. Mr. Proctor clarified that staff works with applicants in annexation scenarios to obtain the best possible package for the City.

Mayor Osborne clarified with staff that the applicant could withdraw his application after Council made its motion or if Council wanted changes, negotiations could continue and come back to Council.

Council Member Ageton asked about the ditch water rights and whether there were outstanding issues associated with that. Mr. Guiler responded that the city had paid for those rights and the applicant was currently holding the check.

Richard Lopez, attorney for the applicant, introduced the project architect Peter Stewart. Mr. Stewart then described the project objectives for Harper Hollow including making the development compatible with the existing adjacent neighborhoods and preserving the Harper family home. He spoke to density, connectivity, the site design and character and the affordable housing community benefit. He highlighted a lower density character as compared to the surrounding properties and the diversity of building types, wide range of affordability and pocket parks throughout. He closed with comments related to community benefit which included community park areas, diversity of building types and incomes and the project completing the neighborhood pattern.

Council Member Gray asked how the parks would be used recreationally. Mr. Stewart outlined the park sizes and indicated they were large enough for outdoor activities such as football, Frisbee etc...

Council Member Cowles asked about transportation and pedestrian connections. Mr. Stewart indicated a path would connect to Northfield and there was also the Wonderland Creek Connection.

Richard Lopez then spoke to the need for Harper Hollow to wait on development of the Kalmia property due to the economic downturn and changes to the requirements during the mean time. The applicant's desire was to move forward with annexation and development of the property but sought the ability to expand the pool of potential buyers for the affordable units by modifying the HUD income limits for the affordable duplexes from HUD +35% to HUD +47% and for the two affordable single family homes from HUD +47% to HUD +50% OR the applicant requested that council provide them with the option to pay cash in lieu of \$50,000 per each required affordable dwelling unit if they can't be sold after 6 months. He urged Council to approve the project with 45.6-percent of the homes as permanently affordable housing but allow them to expand the pool of potential buyers to the aforementioned income limits or alternatively, to approve the exit strategy of cash in lieu.

Council Member Morzel asked Mr. Lopez to review the HUD percentages to clarify which was duplex vs. single family. Mr. Lopez explained that the applicant perceived a gap between the income limits in the affordable housing program which qualified buyers and the selling price of the affordable homes.

Council Member Gray asked what the HOA fees would be for the properties. Rich Lopez indicated those would be between \$180 to \$225 per month.

Council Member Cowles clarified that Mr. Lopez hoped the HUD income limits would be moved from 35% to 47% for the affordable duplexes and from 40% to 50% for the two affordable single family homes. Without these changes, he would prefer to see the \$50,000 cash in lieu in order to proceed with the development.

Council Member Cowles asked Michelle Allen to speak to the income limit. She indicated this was really a Council policy decision concerning the income limit and that the current income limits of HUD plus 40% made the affordable homes available to three person

households earning up to \$91,000 annually, and HUD plus 35% would be affordable to households earning up to \$87,000. Staff hoped to see a range of affordability for the middle-income priced affordable homes on the site and noted that the requested changes could push the income limit close to \$100,000 which in certain circumstances would be over the maximum middle income threshold of 120% AMI.

Council Member Morzel asked Mr. Proctor to describe the affordable housing programs that had been used to help get properties sold.

Council Member Karakehian requested an explanation of how the HUD limits move and the impacts on the affordability. Michelle Allen responded that the Area Median Income, set by HUD, can change over time. In 2010 the HUD "low income" limit was 71.9% of AMI so adding 50% would bring it to 121.9%, or over the 120% AMI middle income limit. For this reason, keeping the income limit at HUD plus 40% would ensure that the 120% AMI threshold was not exceeded in the future.

The public hearing was opened at 8:20 p.m.

1. Daniel Ziskin spoke in support of the community benefit that would be gained from annexing the property however he did not feel it was transit friendly and suggested a small market in the area might be helpful and reduce car traffic.
2. Gary Calderon, co-developer of the project, indicated what they were asking Council for was an exit strategy. They were fine with the number of affordable units and mix of affordable housing types but hoped for some sort of help from the city if the units weren't selling within 6 months.

There being no further speakers the public hearing was closed at 8:25 p.m.

Council Member Gray moved, seconded by Cowles to adopt Ordinance No. 7806 to annex the property located at 3015 Kalmia Ave. and zone the subject property to Flex District zoning per subsection 9-5-2 (c) (7), B.R.C. 1981 and approve Site Review application #LUR2007-00032 to permit a total of 57 dwelling units (29 single-family, 16 duplex units, and 12 fourplex units), which includes an existing house proposed for landmarking, and approve the request for vested rights pursuant to section 9-2-19, B.R.C. 1981.

No vote as substitute motion carried.

Council Member Cowles indicated he would support the motion and would prefer to stick with the HUD requirements recommended by staff on page 38 of the memo.

Council Member Morzel asked why certain limits were allowed at Northfield Commons that would not be considered now. Michelle Allen indicated that Northfield was a different community benefit scenario with different area median income levels. Ms. Morzel agreed that more investment in infrastructure and pedestrian/bike path were important. She also noted in response to comments from Mr. Ziskin, that there had been efforts by the city in the early 1990s to consider a three acre parcel that would have included both commercial and retail.

Council Members Gray and Osborne suggested they would support the main motion.

Council Member Karakehian asked if it ever made sense to pre-agree (incent) on unsold units. He thought if this was agreed upon in advance (i.e. down payment assistance programs etc...) that it would be more of a guarantee for the applicant. He thought there were other opportunities to help the buyers move forward and provide the applicant more assurance that they would be able to sell the affordable units in a reasonable time period.

Council Member Gray expressed that this would also depend upon the amount of funding available in the programs. Mr. Proctor indicated the funding came from a variety of sources and availability of funds could not be ensured in the future.

Deputy Mayor Wilson indicated this discussion could be informing the Affordable Housing Task Force discussion (which seemed backward). He asked if there were anything coming out of the Task Force discussion that would help in this situation. Mr. Proctor indicated many conversations were specific to inclusionary housing rather than annexation, but there were similar policy discussions taking place. Discussions about annexation situations weren't that direct.

Council Member Ageton offered a substitute motion, seconded by Morzel to continue the item to a date to be determined later. Direction to staff was to work with the applicant to provide some options to expand the eligible buyer pool and alternatives in case the affordable homes would not sell in a reasonable time period.

Vote was taken on whether to vote on the substitute motion. The motion carried 5:2; Cowles and Gray opposed; Appelbaum and Becker absent.

Vote was taken on the substitute motion. The motion carried 4:3; Cowles, Gray and Osborne opposed; Appelbaum and Becker absent.

6. **MATTERS FROM THE CITY MANAGER:** - 9:13 p.m.

A. **REPORT FROM CHIEF OF POLICE MARK BECKNER ON BACK TO SCHOOL OPERATIONS.**

City Manager Brautigam provided an introduction to the item. Questions about the Municipal Court and fireworks would also be discussed by Municipal Court Judge Linda Cooke. Police Chief Mark Beckner provided a report on back to school operations on University Hill. Mr. Beckner reported that feedback from the community and experience of officers were also reviewed when looking at resources and needs. He provided various statistics related to crime rates in Boulder and noted that crime was on a downward trend (8% for 2010). Calls for service had been trending upward. This spoke to the Police getting calls for more things/services that were not always related to serious crime. Misdemeanor and disorderly type crimes seemed to be no worse than in previous years according to officer experience. The data suggested that MIP tickets were down and the number of nuisance parties were also down. Fireworks enforcement had been trending upwards. Overtime officers were hired around the Fourth of July timeframe to address this issue. Education and problem solving efforts had significantly increased rather than just enforcement efforts. Back to school efforts on August 26 consumed 27% of the police

staffing. Calls for service that evening were 61 on University Hill for a total of 143 calls in the City.

Council Member Morzel clarified that Boulder received support from the CU Police department. Mr. Beckner commented that they were supported by CU with 5 or 6 officers.

Deputy Mayor Wilson asked what percentage of the calls were related to alcohol? Mr. Beckner commented that at that particular time of the evening approximately 80% of the calls were alcohol related. Mr. Wilson then spoke to some of his perceptions of why things were changing on the Hill such as neighborhoods that used to have NO rental properties that now have one or two and this has led to parties and issues spreading further throughout the area. He suggested more efforts were needed and Mr. Beckner agreed. Progress would be slow as the community underwent a culture shift.

Mr. Beckner noted that City Manager Brautigam had been very supported of the efforts to resolve issues on University Hill.

Council Member Karakehian asked Mr. Beckner to respond to the couple who spoke during open comment that had issues with a party and police response. Mr. Beckner indicated he was working on this issue which seemed to be a misunderstanding with dispatch about the nature of the problem. Mr. Karakehian also requested a future discussion about darker areas on the Hill where there were limited street lights. Ms. Brautigam indicated this was something that was being looked at. Mr. Karakehian asked if there was any increase in the Police budget for the next year. Ms. Brautigam indicated that Police was taking over code enforcement and would be receiving additional FTE's and funding associated with taking over that responsibility.

Council Member Ageton asked Mr. Beckner to describe whether medical marijuana was having an impact on any of the statistics. Mr. Beckner indicated there was no information to suggest that it had any impact on crime statistics; it may be too early to tell. Ms. Ageton indicated this would be interesting to know.

Council Member Gray suggested Council keep in place the land use/hours for bars and restaurants and suggested the City should lobby the state to be able to regulate their hours. She also suggested a night time parking district where it was residents only it would keep some of the cruisers out of the neighborhood. In addition, more on campus CU housing may be an area to look at.

Council Member Cowles asked how officers catch people who set off fireworks. Mr. Beckner responded that typically officers had to be there to catch someone. This was resource intensive for the police department.

Judge Linda Cooke reported that no plea bargains were offered anymore. It was recommended that she impose a \$750 fine and suspend \$500 on the condition that another similar violation was not received in a one year period. There was also a recommendation of 16 to 28 hours of community service. Restorative Justice was also being conducted on many of those cases. Many of the cases were not CU students (about 60% were students).

B. **UPDATE ON THE CAPITAL INVESTMENT STRATEGY STAKEHOLDER COMMITTEE
PROCESS AND SCHEDULE.**

City Manager Brautigam

7. **MATTERS FROM THE CITY ATTORNEY:**

None.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

None.

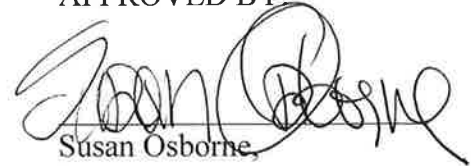
9. **PUBLIC COMMENT ON MATTERS:** (15 min.) Public comment on any motions made under Matters.

10. **FINAL DECISIONS ON MATTERS:** Action on motions made under Matters.

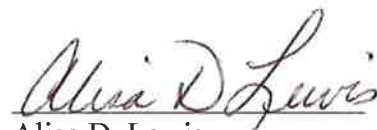
11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 9:38 P.M.

APPROVED BY:


Susan Osborne,
Mayor

ATTEST:


Alisa D. Lewis,
City Clerk